RECENT DECISIONS

ATTORNEY AND CLIENT—PARTNERSHIP—LIABILITY FOR MISAPPLICATION OF FUNDS.—The plaintiff was a client of the defendants who were co-partners engaged in the practice of law. One of the members of the defendant firm embezzled money of the plaintiff received by the firm in the course of its business. The other members of the firm had no knowledge of the crime or participation in its fruits. In a bill to account, *held,* for the plaintiff. *Model Building & Loan Ass'n* v. *Reeves* (App. Div. 1st Dept. 1922) 114 Misc. 137, 194 N. Y. Supp. 383.

If a firm in the course of its business receives money which is misappropriated by one of the partners while in the firm's custody, the innocent partners are individually liable to the defrauded party. *Plumer* v. *Gregory* (1874) L. R. 18 Eq. 621; *Clark* v. *Ball* (1905) 34 Colo. 223, 83 Pac. 529; see Uniform Partnership Act, § 14, b. It has been held in New York that such a misapplication is the individual wrong of the absconder, and not binding on the firm, since the tort was not committed in the course of the firm business nor for its benefit. *Wrynn* v. *Pistor* (1910) 141 App. Div. 104, 125 N. Y. Supp. 970. The action there entailed civil arrest and a reluctance to subject innocent persons to imprisonment probably influenced the decision. See *Stewart* v. *Levy* (1868) 36 Cal. 159. But the reasoning of the case is incorrect and is inconsistent with the instant case. A partner's liability for the tortious acts of his co-partner is determined by principles of agency. See Pollock, *Digest of the Law of Partnership* (11th ed. 1920) 53. It is not a prerequisite to a principal's liability for his agent's fraudulent acts committed within the scope of his employment that the agent intended to confer any benefit on the principal. *Lloyd* v. *Grace Smith Co.* [1912] A. C. 716. A partner moreover is liable for other torts committed by his co-partner in the course of the partnership business even though no benefit accrues to him. *Griswold* v. *Haven* (1862) 25 N. Y. 595; *Monmouth College* v. *Dockery* (1912) 241 Mo. 522, 145 S. W. 785. Thus there seems no valid reason for limiting a partner's liability merely because the defaulter at the time of conversion was not acting in the interests of the firm, so long as the money was received by the firm in the course of its business. The instant case arose before the adoption of the Uniform Partnership Act in New York, but the result would be the same thereunder. See (1919) N. Y. Partnership Law, § 25 (2).

BANKS AND BANKING—CASHIER'S CHECK—PREFERRED CLAIM.—The plaintiff held a trade acceptance of one X which was sent to the defendant bank for collection. X, who was a depositor in the defendant bank with ample funds, paid the draft by check. The check was charged to the account of X and the bank mailed a cashier's check on itself to the bank through which collection was made. Before the cashier's check in the usual course of business had been presented for payment, the defendant bank failed. *Held,* plaintiff entitled to preference over general creditors. *Goodyear Tire & Rubber Co.* v. *Hanover State Bk.* (Kan. 1922) 204 Pac. 992.

Where paper is endorsed to a bank for collection, the bank is trustee of it until collected. See *Lippitt* v. *Thames Loan & Tr. Co.* (1914) 88 Conn. 185, 202, 90 Atl. 369. After collection, in the absence of any special arrangement, the bank becomes a debtor. *Lippitt* v. *Thames Loan & Tr. Co., supra.* The ordinary presumption that a bank becomes a debtor after collection, may be overcome by evidence of an agreement that the bank is to hold the proceeds of collection as a trust fund. *Sherwood* v. *Savings Bk.* (1894) 103 Mich. 109, 61 N. W. 352.